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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,011	11/01/2001	Roy K. Greenberg	PA-5270-RFB	3255
<div>7590 01/11/2008 Brinks Hofer Gilson &amp; Lione P.O. Box 10395 Chicago, IL 60610</div>			<div>EXAMINER PHILOGENE, PEDRO</div>	
			<div>ART UNIT 3733</div>	<div>PAPER NUMBER</div>
			<div>MAIL DATE 01/11/2008</div>	<div>DELIVERY MODE PAPER</div>

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/003,011

Applicant(s)

GREENBERG ET AL.

Examiner

Pedro Philogene

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-20,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-20,22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/22/07</u> . | 6) <input type="checkbox"/> Other: _____  |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/26/07 has been entered.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-20,22,23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Braunschweiler et al. (5,484,444) in view of Bates et al. (6,520,968).

With respect to claim 1, Boyle et al., disclose a medical grasping device comprising: an elongate control member (18,520) having an atraumatic distal tip section, as best seen in FIG.1, and a proximal end portion; the elongate control member further including a grasping portion (14,16,530) proximal the distal tip section; an outer sheath (46,48) with a passageway therethrough, as best seen in FIG.2, surrounding the elongate control member and relatively movable with respect thereto.

Although Boyle et al teach of a control assembly, as set forth in column 24, lines 19-45, it is noted that Boyle et al., did not teach of a control assembly as claimed by applicant. However, in a similar art, Cathcart et al., evidences such a control assembly to enable the control deployment and displacement of a device.

Therefore, given the teaching of Cathcart et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the control assembly, as taught by Cathcart et al, in the device of Boyle et al., to urge the medical grasping device from a retracted to an expanded position.

Furthermore, it is noted that the above combination of references did not teach of an elongated control member that is a flexible cannula defining a lumen extending threthrough into which a guide wire is receivable and movable with respect thereto; as claimed by applicant. However, in a similar art, Braunschweiler et al evidence the use of such an elongated member with cannula and guide wire to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/cathcart et al, as taught by Braunschweiler et al., to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

With respect to claims 4-7, the above combination of references teaches all the limitations, the outer sheath being flexible and kink-resistant, as set forth in column 11, lines 42-67, column 12, lines 1-33, the atraumatic distal tip section tapers to a blunt and

rounded tip; as best seen at the end of the control member 18, the control assembly including an actuation section that is grippable for reciprocal movement along the handle, as set forth in column 6, lines 3-25 of Cathcart et al., and a connecting block (25) as set forth in column 6, lines 3-25 of Cathcart et al.

It is noted that the above combination of references teaches all the limitations, except for a plurality of wire loops fixed to the elongate member; and, the outer sheath and the elongate control member being relatively moveable to urge the plurality of loops, as claimed by applicant. However, in a similar art, Bates et al evidences the use of a plurality of wire loops fixed to the elongate member; and, the outer sheath and the elongate control member being relatively moveable to urge the plurality of loops, to capture and remove biological material from a body lumen.

Therefore, given the teaching of Bates et al it would have been obvious to one having ordinary skill in the art, at the time the invention was made to incorporate the design of the grasping device of Bates in the grasping device of Boyle/Cathcart et al. to capture and remove biological material from a body lumen. Bates et al also teach of an outer sheath having lubricious outer and inner surfaces; as best seen in the FIGS.

Furthermore, it is noted that the above combination of references did not teach of an elongated control member that is a flexible cannula defining a lumen extending threthrough into which a guide wire is receivable and movable with respect thereto; as claimed by applicant. However, in a similar art, Braunschweiler et al evidence the use of such an elongated member with cannula and guide wire to ensure that reliable

operation is achieved and therefore guaranteed the greatest possible operational reliability.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/cathcart et al, as taught by Braunschweiler et al., to ensure that reliable operation is achieved and therefore guaranteed the greatest possible operational reliability.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Boyle et al. (6,695,813) in view of Cathcart et al. (5,681,347) in view of Braunschweiler et al. (5,484,444) in view of bates et al. (6,520,968) in view of Gunther et al. (5,330,484).

With respect to claim 3, it noted that the above combination of references did not teach of a hemostatic seal between the sheath and the elongate control member; as claimed by applicant. However, in a similar art, Gunther et al evidence the use of a hemostatic seal to hold the legs of a grid body.

Therefore, given the teaching of Gunther et al., it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Boyle/Cathcart/Braunschweiler/Bates et al., as taught by Gunther et al to provide a hemostatic seal between the sheath and the elongate control member to hold the legs of the grasping portion.

#### ***Response to Amendment***

Applicant's arguments with respect to claims 1, 3-20, 22-23 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

A shortened statutory period for reply to this action is set to expire THREE MONTHS from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
January 7, 2008

  
**PEDRO PHILOGENE**  
**PRIMARY EXAMINER**